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In the Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF MARYLAND, ET AL., APPELLANTS
v.
UNITED STATES OF AMERICA, ET AL.

TANDY CORPORATION, APPELLANT
v.
UNITED STATES OF AMERICA, ET AL.

NORTH AMERICAN TELEPHONE ASSOCIATION, APPELLANT
v.
UNITED STATES OF AMERICA, ET AL.

STATE OF ILLINOIS, APPELLANT
v.
UNITED STATES OF AMERICA, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether structural relief found by a federal district court to be necessary to remedy Sherman Act violations in interstate telecommunications markets can be negated by state regulatory statutes requiring state approval of asset transfers and otherwise regulating intrastate communications.

2. Whether the district court erred in concluding that the consent decree entered in this case was in the public interest.

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OPINIONS BELOW

The August 11, 1982, opinion of the district court stating that it would approve the decree only if modified in certain respects (J.S. App. 1-172)[1] is not yet officially reported. The August 23, 1982, opinion of the district court denying reconsideration of the customer premises equipment amendments (J.S. App. 195-200) is not reported. The Modification of Final Judgment entered August 24, 1982 (J.S. App. 173-190) is not reported. The order of the district court, dated November 10, 1982, granting certification (J.S. App. 204-208) is not reported.

JURISDICTION

The Modification of Final Judgment was entered on August 24, 1982 (J.S. App. 173), and the order granting intervention to the appellants was entered on August 26, 1982 (J.S. App. 191-194). The notices of appeal were filed between October 25, 1982, and November 5, 1982 (J.S. App. 209-240). On November 10, 1982, the district court certified that direct appeal of this case to the Supreme Court is of general public importance in the administration of justice (J.S. App. 204-208). The Chief Justice extended the time for docketing an appeal for all appellants to and including December 8, 1982, and the appeals were docketed on that date. The jurisdiction of this Court is invoked under 15 U.S.C. 29(b).

STATEMENT

1. In 1949 the United States sued Western Electric Company, Inc., and its parent, American Telephone and Telegraph Company, Inc. ("AT&T"), claiming that the defendants had monopolized and conspired to restrain trade in the manufacture and distribution of telephone equipment in violation of Sections 1 and 2 of the Sherman

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[1] "J.S. App." refers to the Joint Appendix to Jurisdictional Statements.

Act, 15 U.S.C. 1 and 2. *United States* v. *Western Electric Co.*, Civ. No. 17-49 (D.N.J., filed Jan. 14, 1949). The gist of the complaint was that AT&T had unlawfully extended its original monopoly on telephone equipment to control the market for telephone services, and then had used its power in the services market to reinforce its control over the equipment market. The complaint sought the divestiture of Western Electric as a means of eliminating AT&T's monopoly in the equipment market.

Before trial, the parties settled the case by a consent decree, which the district court entered in 1956. The decree prohibited AT&T and the affiliated Bell Operating Companies ("BOCs") from engaging "in any business other than the furnishing of common carrier communications services" (82-953 J.S. App. 6a), defined as "services and facilities * * * the charges for which are subject to public regulation under the Communications Act of 1934" or under state law (82-953 J.S. App. 4a).[2] The decree also required the licensing of Bell System patents to all applicants at reasonable royalties (*id.* at 5a, 8a-9a).

2. In 1974 the government again sued AT&T and Western Electric. *United States* v. *American Telephone*

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[2] In 1980 the Federal Communications Commission ruled that AT&T and other telecommunications common carriers were free under the Communications Act of 1934, 47 U.S.C. (& Supp. IV) 151 *et seq.*, to provide services other than basic transmission services ("enhanced services") and to sell customer premises equipment, without rate regulation by the Commission. *In re Amendment of Section 64.702 of the Commission's Rules & Regulations*, 77 F.C.C.2d 384, on reconsideration, 84 F.C.C.2d 50 (1980), on further reconsideration, 88 F.C.C.2d 512 (1981), aff'd, *Computer & Communications Industry Association* v. *FCC*, No. 80-1471 (D.C. Cir. Nov. 12, 1982) ("*Computer II*"). AT&T then persuaded the New Jersey district court to construe the *Western Electric* decree to permit it to take advantage of the *Computer II* decision. 531 F. Supp. 894 (D.N.J. 1981). The government's appeal from the district's court's order (No. 81-2837 (3d Cir. filed Oct. 30, 1981)), was pending at the time that AT&T and the government agreed to the proposed modification of the decree, which, as further modified, is appealed from here.

& Telegraph Co., Civ. No. 74-1698 (D.D.C. Nov. 20, 1974).[3] The government contended that, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2, AT&T had used its monopoly power in local exchange telephone service to exclude competition in the telecommunications equipment and intercity services markets. In particular, the complaint alleged that AT&T had monopolized customer premises equipment by discriminating against competitors' equipment, had monopolized telecommunications equipment used by the BOCs through various preferential devices, and had monopolized intercity telecommunications through discriminatory refusals to interconnect with other companies and discriminatory terms imposed by local BOCs. The government asked the court to order the divestiture of those parts of the local Bell operating companies that provide local exchange services, or, if that relief were denied, divestiture of Western Electric.[4]

After extensive pretrial litigation, including stipulation and discovery proceedings,[5] trial of the case began on January 15, 1981. At the close of the government's case, AT&T moved to dismiss the action on a variety of grounds. The district court denied that motion, finding, inter alia, that the government had presented sufficient evidence to support its allegations (524 F. Supp. 1336 (1981); see J.S. App. 12). AT&T began presenting its evidence on August 3, 1981.

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[3] This complaint also named as a defendant AT&T's research arm, Bell Telephone Laboratories.

[4] Stipulation package 82, ¶¶ 16-30 (lodged June 17, 1981). The complaint originally had prayed for divestiture of both the operating companies and Western Electric.

[5] The pretrial events are summarized in the opinion of the district court at J.S. App. 10-11. In addition, AT&T unsuccessfully sought dismissal of the lawsuit on the grounds that it enjoyed a blanket implied antitrust immunity under the Communications Act. 427 F. Supp. 57 (D.D.C. 1976) (Waddy, J.), motion for leave to file petition for cert. before judgment denied, 429 U.S. 1071 (1977), cert. denied, No. 77-1009 (D.C. Cir. May 27, 1977), cert. denied, 434 U.S. 966 (1977).

3. On January 8, 1982, the government and AT&T announced a proposed modification of the 1956 decree that provided all of the structural and injunctive relief that the government had sought in the 1974 litigation, and thus made further litigation of the 1974 case unnecessary.[6] The proposed modification sought to prevent continuation of the anticompetitive practices alleged in both cases by separating those parts of the Bell operating companies that provide local telephone services, which presently constitute a series of monopoly markets, from the remainder of the AT&T system. This separation would eliminate AT&T's incentive and ability to employ its monopoly power in local exchange services to disable competition in other, potentially competitive markets. Under the terms of the decree, the BOCs would be reorganized to include those assets necessary to provide exchange telecommunications services within areas defined according to the decree's requirements. The BOCs then would be divested (J.S. App. 174), and thereafter would be allowed to provide only: (1) exchange telecommunications service within the defined areas (*id.* at 176, 178); (2) exchange access service on a nondiscriminatory basis to all firms, including AT&T, that provide interexchange (long distance) service between such areas (*id.* at 175-176); and (3) monopoly services actually subject to rate regulation (*id.* at 176). The BOCs thus would be prohibited from providing interexchange telecommunications and information services, and from manufacturing or providing telecommunications and customer premises equipment (*id.* at 176). At the same time, because the new structural re-

[6] The government and AT&T accordingly agreed to dismiss the 1974 case without prejudice to its resumption in the event that the proposed modification was not entered. They submitted a stipulation of dismissal in the 1974 case, which the district court ordered to be lodged, but not filed. At the same time, the government and AT&T agreed to dismiss as moot the government's pending appeal in the Third Circuit from the order in the *Western Electric* case construing the 1956 decree (see note 2, *supra*), and a motion to dismiss was granted.

lief rendered the old restrictions unnecessary, AT&T would be freed of the 1956 decree's patent licensing obligations and the restraints that decree imposed on its sale of services and products. AT&T would thus be free to compete in any market it chose. See generally J.S. App. 12-17.

Because the proposed settlement was in the form of a modification of the 1956 judgment in the *Western Electric* case, it was initially filed in the United States District Court for the District of New Jersey with the request that the entire matter be transferred to the United States District Court for the District of Columbia for proceedings before Judge Greene, who was presiding over the 1974 case. The government and AT&T had agreed, moreover, that procedures identical to those required for consent decrees by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) *et seq.* (the "Tunney Act") should be followed, although, in the government's view, the statute technically was inapplicable. The New Jersey district court, however, approved the decree on January 11, 1982, and only thereafter transferred the *Western Electric* case to the United States District Court for the District of Columbia (J.S. App. 18). That court vacated the January 11 approval of the decree and ordered the start of Tunney Act-type procedures (*id.* at 21-22). The United States published in the Federal Register notice of the proposed settlement and a competitive impact statement. 47 Fed. Reg. 7170 (1982). The district court received more than 600 comments on the settlement (see J.S. App. 201-202) and numerous briefs on several issues from more than 100 organizations (see *id.* at 23-25). On June 29 and 30, 1982, it heard oral argument at which 20 counsel from 18 organizations participated (*id.* at 25 & n.65).

On August 11, 1982, the district court issued a lengthy opinion discussing the proposed decree (J.S. App. 1-172). The court found that most of the provisions were in the public interest. It upheld the basic provision for AT&T's divestiture of the BOCs' local exchange monopolies as defined in the proposed decree (*id.* at 48-60). Over the ob-

jections of several states and state regulatory agencies, the court held that, in order to effectuate the decree's goal of eliminating the effects of past anticompetitive conduct in interstate communications, it could order AT&T to take actions, such as reorganizing ownership of assets within the firm, and ultimately separating ownership of assets and common carrier responsibilities, without obtaining prior approval of such actions from state regulatory agencies (*id.* at 36-48). The court also approved releasing AT&T from most of the line-of-business restrictions and patent licensing requirements imposed by the 1956 decree (*id.* at 77-97) and approved the prohibition on BOC manufacture and sale of telecommunications equipment used by telephone companies (*id.* at 97-106). Finally, the court rejected various claims by competitors of AT&T, including a contention that AT&T should be barred from selling customer premises equipment in its "Phone Center" stores (*id.* at 108 & n.248).

The district court stated, however, that it would not approve the decree as in the public interest unless the parties agreed to several substantive and procedural amendments. In particular, the court required that an injunction be entered against AT&T's participation in electronic publishing for at least seven years after the entry of the decree (J.S. App. 86-97), and that the restrictions on BOC marketing of customer premises equipment (*id.* at 106-109) and provision of Yellow Pages (*id.* at 109-112) be removed. The court also required inclusion in the decree of a provision expressly allowing the BOCs to request the court to remove other restrictions "upon a showing that there is no substantial possibility that an Operating Company could use its monopoly power to impede competition in the relevant market" (*id.* at 113-114).[7] The court stated in conclusion that, if these and certain other changes (see *id.* at 170-172) were made, it

[7] The government and AT&T had contended that a BOC's right to seek relief from obsolete restrictions in the future was, in any event, implicit in the decree.

would approve the decree as being in the public interest (*id.* at 172).

The government and AT&T informed the court of their acceptance of the modifications, except that the government asked the court to reconsider its position on the sale of customer premises equipment by the BOCs (J.S. App. 196 & n.1). On August 23, 1982, the court denied this request (*id.* at 195-200). The government and AT&T then agreed to a new decree incorporating the court's proposed changes. On August 24, 1982, the court entered the decree as a modification of the final judgment in the *Western Electric* case (*id.* at 173-190) and accepted filing of the stipulation of dismissal in the 1974 case.

4. On August 26, 1982, the court allowed numerous states, state regulatory agencies, and private parties, many of whom had already filed briefs in the district court (see J.S. App. 158), to intervene for purposes of appealing the final judgment and participating in the proceedings concerning the reorganization plan to be filed (*id.* at 191-194).[8] Several of these intervenors noticed appeals from the judgment (see *id.* at 209-240). The United States and the states of Alabama, Maryland, and Tennessee, supported by most of the other appellants and by AT&T (see *id.* at 204-205 & n.2), asked the district court to certify the appeals for immediate review by this Court pursuant to the Expediting Act, 15 U.S.C. 29(b).

On November 10, 1982, the district court certified the appeals (J.S. App. 204-208), finding that "immediate consideration of the appeals * * * by the Supreme Court is of general public importance in the administration of justice" (*id.* at 207).[9] The court found that the ordinary

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[8] On October 14, 1982, two other parties were permitted to intervene (J.S. App. 203).

[9] Although Alabama and the Tennessee Public Service Commission filed notices of appeal, they apparently never moved to intervene, and the district court did not certify their appeals. The court also declined to certify the appeal filed by Telephonic Equipment

appellate process of court of appeals review, subject to discretionary review in this Court by writ of certiorari, was unlikely to be completed before February 24, 1984, the deadline for divestiture set by the decree. That would lead, the court concluded, to one of two undesirable alternatives: 1) staying the mammoth reorganization pending judicial review, which would perpetuate "extremely unsettled" conditions in the entire telecommunications industry (*id.* at 206); or 2) allowing the reorganization to go ahead as scheduled, thus creating, before the appellate process could run its course, a fait accompli that could not, as a practical matter, be undone (*ibid.*). In this connection, the court also noted that the arrangements being undertaken by AT&T to facilitate the reorganization would inevitably be affected adversely by prolonging the period of uncertainty about the validity of the decree (*ibid.*). Moreover, various states and public utility commissions had indicated that they would seek injunctive relief in other courts, a course that might well have produced conflicting rulings and jeopardized implementation of the decree; the Court found that this also argued for expedited review (*id.* at 207). In addition, the court indicated that some of the issues raised in the appeals were of significant importance to the administration of justice (*id.* at 206).

ARGUMENT

The government agrees with the district court that immediate consideration of these appeals by the Supreme Court is "of general public importance in the administration of justice." Because the earliest possible resolution of these appeals is essential, we urge this Court to accept direct review of them under the Expediting Act, 15 U.S.C. 29(b). We submit, however, that the appeals present no substantial issue warranting plenary consideration by

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Corporation, whose motion to intervene had been denied (J.S. App. 205 n.2, 207 n.9).

this Court. Accordingly, pursuant to Rule 16.1 of the Rules of this Court, the United States moves for summary affirmance.[10]

I. THE COURT SHOULD ACCEPT THE DIRECT APPEALS

A. Prior to 1974, the Expediting Act of 1903, ch. 544, 32 Stat. 823 *et seq.*, provided for direct review by this Court in all government civil antitrust suits. The Act was amended to its present form in 1974 to relieve this Court of that burden. See S. Rep. No. 93-298, 93d Cong., 1st Sess. 6 (1973). In amending the statute, however, Congress recognized that occasionally there would be cases for which the public interest required an avenue of direct appeal to this Court. Accordingly, Congress preserved a right of direct appeal in cases qualifying under 15 U.S.C. 29(b). This case, the government believes, epitomizes the type of case in which Congress found direct appeal to be necessary.

The language and legislative history of the 1974 amendment to the Expediting Act demonstrate a congressional intent that this Court directly review judgments in government antitrust suits when they are of such economic significance that prompt decision by this Court would serve the public interest in enforcement of the antitrust laws.[11] Whether a case warrants direct review under the Act turns on the importance of a

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[10] Under the Expediting Act, if the Court agrees to direct review, the appeal should be "dispose[d] of * * * in the same manner as any other direct appeal authorized by law." Thus, it is entirely appropriate for the Court to affirm summarily as it sometimes does in the case of direct appeals taken from district courts under other statutes. See, e.g., *McClure* v. *Reagan*, 454 U.S. 1025 (1981); *Slate* v. *Noll*, 444 U.S. 1007 (1980). The district court's comprehensive opinion, which fully addresses each of the contentions raised by appellants, provides a sound basis for summary affirmance.

[11] See generally S. Rep. No. 93-298, 93d Cong., 1st Sess. 7-8 (1973); H.R. Rep. No. 93-1463, 93d Cong., 2d Sess. 10-11 (1974); 119 Cong. Rec. 24599 (1973); 120 Cong. Rec. 38585-38587, 39123 (1974).

prompt decision of the case by this Court, not on the difficulty or general significance of the legal issues presented. The Act expressly refers to the importance of "immediate consideration of the appeal" and makes no mention of the significance of the issues raised. Similarly, the focus of the legislative history of the Expediting Act is not on the importance of the issues raised to the development of the law, but rather on the immediate impact of the case itself. As the House Judiciary Committee noted in its report on this provision, "public antitrust cases are unlike other federal cases, * * * they have an impact on the economic welfare of this nation, and * * * consequently they should be treated accordingly." H.R. Rep. No. 93-1463, 93d Cong., 2d Sess. 14 (1974). See also S. Rep. No. 93-298, 93d Cong., 1st Sess. 3-4 (1973); 119 Cong. Rec. 24599 (1973). While Congress, of course, did not regard every government civil antitrust suit as being sufficiently important to merit direct review, it did establish a mechanism by which cases with the most significant impact on the public interest could be appealed directly to this Court.

To assist this Court in determining the importance of a particular case, Congress provided for an initial screening by the district court that decided the case; its determination that a case merits direct Supreme Court review is both a jurisdictional pre-condition to such review and a valuable guide for this Court in making its decision whether to hear the appeal. In this case, the first in the history of the amended Expediting Act in which the United States has sought, or a district court has certified, a direct appeal, the considerations of public policy and sound judicial administration that underlie the Expediting Act strongly indicate that the district court correctly assessed the relevant factors and that this Court should accept the direct appeal.[12]

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[12] The Court should accept direct review of all of the appeals filed. Although the Expediting Act initially states that "an appeal" shall lie to this Court if the district judge certifies that "the ap-

B. 1. The judgment in this case warrants direct review because delay in resolving the validity of the decree will have a broad and significant adverse impact on the telecommunications industry, on related industries including data processing, and thus on the public in general.[13] The telecommunications industry, in itself and together with the increasingly dependent data processing industry, is of major and increasing significance in the American economy.[14] Telecommunications includes not only voice telephone communications but also the transmission of data and of radio and television programming. The participants in the industry include common carriers providing a variety of local and long distance services and the manufacturers and sellers of equipment used to originate, switch, transmit, and terminate telecommunications. Moreover, as the Federal Communications Commission has recognized,[15] the telecom-

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peal" meets the statutory criteria, it is apparent that Congress did not intend to authorize fragmentation of the appellate process. The practice under the original Expediting Act of 1903 was that, if an appeal was filed, the entire case went to the Supreme Court. The amended statute specifies that, if one appeal is certified, "any cross appeal" also shall be docketed in the Supreme Court (15 U.S.C. 29(b)), thus clearly indicating an intent to consolidate all appeals in one court. Moreover, the overriding objective of the Act—expediting final resolution of the case—would be frustrated if separate appeals from the single judgment entered in this case remained to be decided in the court of appeals while other appeals proceeded directly to this Court.

[13] In part because of the magnitude of the financial and other public interest ramifications of the consent decree, there has been a high level of public participation in the proceedings that led to the district court's determination that the decree is in the public interest. See page 6, *supra*.

[14] The Bell System, by far the largest telecommunications firm, had total operating revenues in 1980 of more than $50 billion—almost two percent of the gross national product of the United States (J.S. App. 33 n.85).

[15] See *Computer II*, note 2, *supra*.

munications industry is increasingly intertwined with the economically significant and rapidly growing data processing industry.[16]

AT&T is, of course, the overwhelmingly dominant firm in this industry, both in the provision of local exchange telecommunications and in the economically dependent markets for interexchange services and telecommunications equipment.[17] The decree entered in this case provides an effective structural remedy that, in the government's view, will prevent abuse of AT&T's local exchange bottleneck monopolies, and thus further the public interest in competition. The decree will further aid competition by eliminating restrictions imposed by the 1956 decree on AT&T's entry into data processing and other unregulated markets.

The decree seeks to make the competitive benefits of divestiture available to the public in the shortest possible time that is consistent with orderly procedures. Thus, an essential provision of the decree is a strict timetable for divestiture of the BOCs' local exchange functions. Not later than six months after the effective date of the decree, i.e., by February 24, 1983, AT&T must submit a plan of reorganization. That plan must provide for the completion of the divestiture within 18

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[16] The value of industry shipments for the computer equipment industry in 1981 was more than $30 billion. United States Department of Commerce, *U.S. Industrial Outlook 1982*, at 223. The industry has been, and is expected to continue to be, one of the fastest growing in the United States. *Id.* at xvii, 227. The closely related computer services industry (which includes processing services, professional services, and software products) had revenues of approximately $18 billion in 1981. *Id.* at 226-227.

[17] Since 1960, the Bell Operating Companies have collected 85% of all local service revenues (524 F. Supp. at 1348 n.33). As late as 1981, AT&T's share of interexchange revenue was over 75% (J.S. App. 68). The government contended in this case that, between 1974 and 1977, AT&T's share of the total telecommunications equipment market was approximately 60%.

months after the effective date of the decree, i.e., by February 24, 1984.[18]

A series of complex actions is required to develop and implement the divestiture plan, and these actions have already commenced.[19] The decree requires identification of the areas to be served by the BOCs.[20] It also requires the transfer from AT&T to the BOCs and from the BOCs to AT&T of the facilities, personnel, systems, and other assets corresponding to their respective post-divestiture functions. Finally, once this reorganization of assets has occurred, the BOCs will be separated from AT&T by means of a stock spin-off to AT&T stockholders.

This process of reorganization and divestiture by a company as large and widely held as AT&T requires precise and costly planning. Delay in the planning and implementation of the divestiture schedule, and attendant uncertainty as to when—and, indeed, whether—the actions required by the decree will occur, would be harmful not only to AT&T, its employees, shareholders, and customers,[21] but also to other firms in the telecommuni-

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[18] AT&T has represented to the government and the district court that, in order to facilitate accounting and corporate transactions, it intends to complete the divestiture on or before January 1, 1984.

[19] The reorganization plan, a 471-page document, has been submitted to the district court, which will receive and consider comments from interested persons.

[20] As the district court noted (J.S. App. 205 n.7), AT&T has submitted a proposal dividing the areas in which local service will be provided by the newly independent BOCs (called "exchange areas" or Local Access and Transport Areas ("LATAs")) from the areas to be served by AT&T and other long distance telecommunications companies. Public comments have been received, and the government and AT&T have responded to these comments.

[21] As AT&T has explained in greater detail in its motion to affirm, delay in obtaining a definitive legal ruling on the validity of the decree could necessitate costly revisions in the process that is now underway and hamper the ability of AT&T and the BOCs to secure necessary financing (see J.S. App. 206).

cations and related industries, whose business plans depend on the divestiture schedule. Most importantly, it would be harmful to the public interest in speedily ending restraints on competition and establishing a restructured, competitive telecommunications industry.

2. As the district court found (J.S. App. 207), expedited direct review by this Court also is necessary to minimize the risk that states will obtain state or federal court orders that enjoin actions essential to the decree's implementation or otherwise conflict with the decree. Some states have suggested that, in the absence of a final determination by this Court on the issue of the decree's preemptive effect on state regulatory law (see pages 16-25, *infra*), they would seek such orders (see J.S. App. 207). Because of the multiplicity of courts that could be involved in such actions, it is quite possible that some orders would be entered in such proceedings that would delay uniform nationwide implementation of the divestiture and result in unnecessary expense for all concerned.

Moreover, as is made clear by their own actions, direct appeal is in the interest of the states as well.[22] If the states' appeals were heard first by the court of appeals and rejected, it would be most unlikely that they could obtain review by this Court in advance of the scheduled divestiture date. As we have shown, it would be contrary to the public interest to delay divestiture pending further appellate proceedings, but, as the district court noted (J.S. App. 206), after the divestiture it would "probably be impossible as a practical matter to restore the status quo ante" in the event of an appellate determination in favor of the states. These undesirable alternatives of delaying the divestiture or after-the-fact review both can be avoided by expedited consideration and decision by this Court.

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[22] Most states either sought certification in the district court for direct appeal or supported motions by other parties for such certification. No state opposed certification. See J.S. App. 204-205 & n.2.

3. The issues raised by appellants are particularly suited to expedited direct review by this Court. The preemptive effect of the federal antitrust decree on state regulatory law, contested in the states' appeals, is purely an issue of law. Its resolution will not require the Court to examine an evidentiary record, and therefore prior review by the court of appeals is not necessary to facilitate this Court's review. Similarly, with respect to the private intervenor-appellants' claims that the district court erred in declining to require the modifications they favored, the Court need not review any complex factual record. It need only determine whether the district court applied the correct legal standard and acted within its discretion in concluding that the judgment consented to by the parties was in the public interest.

II. THE COURT SHOULD SUMMARILY AFFIRM THE JUDGMENT OF THE DISTRICT COURT

A. The States' Contention That They Have The Authority To Block Implementation Of The Decree Is Groundless

The states contend (Joint J.S. 9-14; Ill. J.S. 17-21) that, without permission of their regulatory commissions, the district court lacked the authority to order the divestiture the decree requires or to impose restrictions on future service by the BOCs. In effect, the states' position is that a federal court is powerless, without state regulatory permission, to fashion an effective remedy for AT&T's anticompetitive conduct in the interstate telecommunications industry. The district court correctly rejected this argument (J.S. App. 36-48), which fundamentally misconceives the substantive scope of the Sherman Act and the attendant power of a federal court under the Supremacy Clause to remedy actions plainly subject to the Sherman Act's requirements and thus within the court's jurisdiction.

1. The states do not and cannot dispute basic Supremacy Clause principles. Under the Supremacy Clause,

state laws that conflict with a federal statute are, to the extent of the conflict, invalid. See, e.g., *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158-168 (1978). By the same token, state laws that conflict with a decree that a federal court finds necessary and appropriate to remedy violations of federal law are, to that extent and that extent only, preempted under the Supremacy Clause. And this is so even if there is no contention that the state laws are, apart from the decree, in any way invalid. See *Washington* v. *Fishing Vessel Association*, 443 U.S. 658, 695 (1979); *North Carolina Board of Education* v. *Swann*, 402 U.S. 43 (1971); *Griffin* v. *County School Board*, 377 U.S. 218, 232-234 (1964); *Cooper* v. *Aaron*, 358 U.S. 1 (1958). The federal court properly takes the state's interests, as well as other affected interests, into account in fashioning fair and effective relief. Whether the court has done so, however, goes not to the court's power to preempt conflicting state laws, but only to whether it has exercised the power appropriately in the particular circumstances presented.

These Supremacy Clause principles control here. Section 4 of the Sherman Act, 15 U.S.C. 4, expressly authorizes federal courts to fashion injunctive relief adequate to remedy federal antitrust violations. Acting pursuant to this authority, the district court in this case entered the decree, concluding after due consideration of all affected interests that the decree provided the most effective and appropriate remedy for the barriers to competition that the United States had alleged, and that it did not unnecessarily intrude on the interests of the states. Under general Supremacy Clause principles, the decree therefore preempts, to the limited extent necessary, conflicting state regulatory requirements.[23]

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[23] The federal courts' power to preempt inconsistent state regulatory laws is no less in consent decrees than in litigated decrees. The source of the courts' authority to enter consent decrees, like other injunctive decrees in government antitrust cases, is Section 4 of the Sherman Act, 15 U.S.C. 4. That a court's judgment is based upon the parties' consent does not detract from its character as a

The states argue, however, that because, under *Parker* v. *Brown*, 317 U.S. 341 (1943), and its progeny, the Sherman Act does not extend to "state action," the usual Supremacy Clause principles do not apply, and the federal antitrust remedy must be subject to the subsequent judgment and approval of state regulatory authorities. The states' argument misunderstands both the state action doctrine and the anticompetitive harms that this case was brought to remedy.

The state action doctrine is a precisely defined limitation on the substantive reach of the Sherman Act. It recognizes that Congress did not intend to impose liability under the Sherman Act for state decisions that displace the functioning of the competitive market with active state control and regulation. *Parker* v. *Brown*, *supra*. Nothing, however, in the government's complaint in this case or in the decree entered by the district court in any way conflicts with this principle. The government's complaint did not contend that AT&T's local monopolies, authorized and regulated by the states, were in themselves unlawful. Instead, it contended that AT&T's ownership of the local monopolies allowed it to disable competition in other markets in which it was engaged—markets that were or could be competitive. Moreover, contrary to the states' apparent belief, the decree in no way mandates competition in markets in which the state has the power to maintain a franchised and regulated monopoly. Its structural and injunctive provisions are directed, instead, to allowing unimpeded competition in interstate markets

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judicial act. *United States* v. *Swift & Co.*, 286 U.S. 106, 114-115 (1932). For example, a federal court may enjoin prosecution of a state court action seeking an injunction prohibiting conduct required by an antitrust consent decree. *United States* v. *American Society of Composers, Authors & Publishers*, 442 F.2d 601 (2d Cir. 1971). See also *Brown* v. *Neeb*, 644 F.2d 551, 563 (6th Cir. 1981). Moreover, the district court's independent public interest determination, required under the Tunney Act for original consent decrees and under general equity standards for consented modifications, eliminates any reason for giving less respect to a judicially approved consent decree than to a litigated judgment.

in which competition otherwise is possible, and which the Sherman Act protects.

This Court repeatedly has held that the state action doctrine does not immunize private conduct from Sherman Act liability, even if the conduct has received the affirmative sanction of state legislation or is defended as consistent with state regulatory regimes. See *California Retail Liquor Dealers Association* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 106 (1980); *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389, 415 n.45 (1978); *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579 (1976); *Parker* v. *Brown, supra*, 317 U.S. at 351. Indeed, with respect to private conduct, the Sherman Act necessarily interferes with the operation of state laws by making unlawful private agreements and arrangements that state law otherwise would approve and enforce. See, e.g., *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951). Applying these principles, the federal courts consistently have held that the anticompetitive conduct at issue in this case—monopolization of interstate telecommunications services and equipment markets—is private conduct that is outside the state action exemption and hence fully subject to the Sherman Act.[24] The states do not argue otherwise. They do not claim to possess the power, let alone to have exercised the power, to regulate through their statutes the provision of interstate telecommunications service and equipment that is the subject of this antitrust action. See *Northern Securities Co.* v. *United States*, 193 U.S. 197, 350 (1904).

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[24] *United States* v. *AT&T*, 524 F. Supp. 1336, 1345 (D.D.C. 1981); *United States* v. *AT&T*, 461 F. Supp. 1314, 1320-1330 (D.D.C. 1978). See also *Phonetele, Inc.* v. *AT&T*, 664 F.2d 716 (9th Cir. 1981), petition for cert. pending, No. 81-2359; *Sound, Inc.* v. *AT&T*, 631 F.2d 1324, 1327-1331, 1334-1335 (8th Cir. 1980); *Essential Communications Systems, Inc.* v. *AT&T*, 610 F.2d 1114, 1125 (3d Cir. 1979); *Northeastern Telephone Co.* v. *AT&T*, 477 F. Supp. 251 (D. Conn. 1978), rev'd on other grounds, 651 F.2d 76 (2d Cir. 1981).

The states' argument thus reduces to the assertion that, although they may not immunize and have not immunized the private anticompetitive conduct that is the subject of this antitrust suit, the state action doctrine allows them to block relief necessary and appropriate to eradicate the effects of that private restraint on interstate commerce. The states' claim is unprecedented. No authority they cite, and none that we are aware of, holds that the state action doctrine bars effective antitrust relief against private anticompetitive actions that themselves do not qualify for the state action exemption. Nor does the extension of the state action doctrine for which the states contend have any basis in congressional intent. The markets on which the government's 1974 case primarily focused are subject, under the Communications Act of 1934, to regulation by the Federal Communications Commission, and the competition that the case primarily was brought to protect was competition that the Commission affirmatively had approved and encouraged. See page 22, *infra*. In the Communications Act, with exceptions not applicable here, Congress carefully preserved the applicability of the antitrust laws.[25] In doing

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[25] The Communications Act grants express antitrust immunity only for a limited category of telephone and telegraph company mergers approved by the FCC. See 47 U.S.C. 221 and 47 U.S.C. (& Supp. IV) 222. While strictly limiting this express grant of antitrust immunity, Congress specifically provided in the Communications Act for the application of the Clayton Act to communications carriers and authorized the FCC to enforce against such carriers certain Clayton Act prohibitions on anticompetitive conduct. See 15 U.S.C. 21(a), as amended by Section 602(d), 48 Stat. 1102; *Georgia* v. *Pennsylvania R.R.*, 324 U.S. 439, 456 (1945). This combination of express, limited antitrust immunity and enforcement authority conferred by the statute demonstrates the congressional intent that, in all other respects, the antitrust laws are fully applicable to matters within the FCC's jurisdiction. See *Essential Communications Systems, Inc.* v. *AT&T, supra*, 610 F.2d at 1120. The legislative history of the Communications Act and the regulatory statutes that preceded it confirms that Congress intended the FCC's jurisdiction over communications carriers to operate concurrently with the antitrust laws. *Essential Communications, supra*, 610 F.2d at 1117-1121.

so, it clearly contemplated that, were antitrust violations found, the federal courts would be able to provide effective relief.

The states' argument would altogether defeat this purpose, in effect nullifying the Sherman Act as applied to interstate telecommunications,[26] and weaken the Act generally in any national industry where there is extensive state public utility regulation.[27] As this Court has stressed, a government injunctive action is only as effective as the relief that it obtains, for without relief, "the Government [would have] won a lawsuit and lost a cause." *International Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947); see also *United States* v. *Grinnell Corp.*, 384 U.S. 563, 577 (1966). Yet, were the states' position correct, the state regulators, rather than the federal court, would effectively decide what antitrust remedy is available for antitrust violations by utilities they regulate based on the regulators' assessments of the state's interests alone, and with no obligation to consider at all the benefits of the decree to national markets and interests. The state action doctrine in no way suggests such a complete reversal of Supremacy Clause principles.

2. The question here, therefore, is not, as the states have put it, whether the antitrust court has the power

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[26] Interstate and intrastate telecommunications are carried by one integrated national system. The FCC has found that it is physically impossible to separate most facilities clearly into intrastate and interstate assets because they are used for both types of service. *North Carolina Utilities Commission* v. *FCC*, 537 F.2d 787, 793 (4th Cir.), cert. denied, 429 U.S. 1027 (1976). See also *California* v. *FCC*, 567 F.2d 84 (D.C. Cir. 1977). And while it would be theoretically possible to build separate telecommunications systems, such an effort would be so inefficient that no one has considered it to be economically feasible. In these circumstances, acceptance of the states' position would surely result in a reversal of the primacy of federal authority dictated by the Supremacy Clause and expressed in the Communications Act.

[27] Asset transfers and issuance of stock are commonly regulated by state public utility commissions, and they are essential to implementation of virtually any divestiture decree.

to implement effective relief, but rather whether the district court's exercise of that power in this case is reasonably necessary and appropriate to protect the antitrust interests at stake, in light of the other interests—including state regulatory interests—that the decree might affect. The district court properly applied this standard in reaching its judgment.

There can be no doubt that the government and the district court were correct in concluding that the only effective relief for the competitive harms the government alleged is to divest AT&T of its regulated local monopoly functions. As this Court has said, "[d]ivestiture * * * has traditionally been the remedy for Sherman Act violations whose heart is intercorporate combination and control * * *." *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 329 (1961).[28] The original 1956 decree failed to provide such structural relief, and so failed, in the government's view, effectively to protect competition. The Federal Communications Commission, to which Congress gave extensive regulatory power over AT&T, also has been incapable of removing the threat to competition presented by AT&T's structure (see J.S. App. 63). Indeed, as noted above, much of the competition that the government's 1974 case sought to free from unlawful restraints is competition made possible by the Commission's procompetitive policies. Accordingly, the FCC has stated that the basic provisions of the decree are in the public interest and will further its objectives. Brief of FCC as Amicus Curiae 6-7, 9-12 (filed Apr. 20, 1982). The decree's antitrust remedies thus represent an effective—indeed, the most effective possible—means of promoting

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[28] Simple divestiture of the BOCs, without the reorganization the decree requires, would not relieve the competitive harms the 1974 case concerned, both because the BOCs own AT&T's in-place customer premises equipment, together with the personnel and equipment used to install and maintain it, and because the BOCs own a significant share of the facilities used to provide AT&T's interstate long distance services.

the Sherman Act's and the Commission's policies governing competition in interstate telecommunications markets.

Moreover, the district court correctly found that the decree did not significantly or unduly interfere with the achievement of legitimate state regulatory interests. As the district court plainly stated (J.S. App. 47), "a judicial remedy may infringe upon state law only to the extent necessary to protect the federal interest." The decree proposed by the United States and entered by the district court manifests the restraint appropriate to federal-state relations. It will in no way limit or expand the present scope of respective federal and state regulatory jurisdictions. To the contrary, it calls only for a one-time transfer of facilities and personnel. After that transfer, the states will continue to have full authority to regulate intrastate telecommunications service, and the FCC will continue to have authority over interstate service.

The states' argument that the decree radically alters state regulatory authority rests on serious misconceptions of the decree's requirements. Contrary to the states' claim (Joint J.S. 11), the decree does not preclude the states from displacing competition in favor of state regulated monopoly service for *intrastate* telecommunications (J.S. App. 176). Moreover, if a state chooses to require monopoly service in a potentially competitive intrastate market (see Joint J.S. 8), it is free under the decree to do so. Indeed, the only ongoing limitation that the decree places on state policy is that a BOC may not provide service other than exchange telecommunications, exchange access, directory advertising, and the marketing of CPE, as well as monopoly services actually subject to rate regulations.[29] In short, the decree in no way interferes with

[29] AT&T has submitted for the district court's approval a proposal delineating the areas of BOC service, or "LATAs." The court has received the comments of the states in order to inform its consideration of this matter (J.S. App. 205-206 n.7). These exchange areas, however, will only determine, for purposes of the decree, the division of assets and service responsibilities between AT&T and the

a state's power, with respect to telecommunications markets within the state's jurisdiction, to substitute its regulation for competition.

Only in one other way can the decree be characterized as even in potential conflict with state regulation. The decree requires a one-time-only transfer of assets between AT&T and the BOCs preparatory to divestiture, in order to separate assets to be used by AT&T in interstate competitive services, which necessarily include some intrastate service facilities, from BOC assets to be used in noncompetitive services (J.S. App. 174). This transfer, although not subject to veto by the states,[30] will not take place until the court approves it, and such approval will come only after the states and other interested parties have had a full opportunity to present their informed views to the district court (*id.* at 185). In any event, the decree in no way curtails the power of the states to regulate local or intrastate rates, including the rates charged intrastate long distance service providers for exchange access. Hence the states retain the ability they now have to subsidize local rates from intrastate long distance service, if they deem such subsidization appropriate to further "universal service" or other state regulatory goals.

In sum, the decree avoids any unnecessary intrusion on legitimate state interests in its effort to provide necessary protection to the vital federal interest in effective competition in the interstate telecommunications markets. As the government explained in its Competitive Impact Statement, the only alternative to the divestiture the decree provides would have been an elaborate injunctive decree of a kind that inevitably would have been difficult to enforce, uncertain in its effectiveness, and necessarily far more intrusive into the states' exercise of their regulatory powers. In terms both of the public interest

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BOCs. They do not determine "local" and "long distance" rate areas for state regulatory purposes. Cf. Joint J.S. 14.

[30] AT&T has indicated that it will make informational filings with state regulatory agencies.

in an effective antitrust remedy and of minimizing effects on state regulatory regimes, "the public is entitled to the surer, cleaner remedy of divestiture." *United States* v. *E.I. du Pont de Nemours & Co.*, *supra*, 366 U.S. at 334. The decree is thus an altogether appropriate exercise of the federal antitrust court's remedial power under Section 4 of the Sherman Act, and under established Supremacy Clause principles it preempts, to the minimal extent necessary, conflicting state regulatory requirements.

B. The Private Parties' Claims That The District Court Should Not Have Approved The Decree Are Insubstantial

Two private intervenor-appellants, Tandy and North American Telephone Association ("NATA"), claim for various reasons that the decree is inadequate. Neither raises an issue worthy of plenary consideration by this Court.

The statutory standard for approval of a consent decree in a government antitrust case is whether it is in the public interest. 15 U.S.C. 16(e).[31] The district court made that finding here, and only if that determination was erroneous may the decree be set aside on appeal.

A consent judgment is the result of a process quite different from litigation in which, after trial, one party wins and one party loses. As this Court has emphasized, "consent decrees are normally compromises in which the parties give up something they might have won in litigation and waive their rights to litigation." *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235 (1975). In making these compromises, the government must have the discretion to accept a decree that in its view advances

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[31] The same "public interest" standard applied prior to the enactment of the Tunney Act (see *United States* v. *Associated Milk Producers, Inc.*, 394 F. Supp. 29, 44 (W.D. Mo. 1975), aff'd, 534 F.2d 113 (8th Cir.), cert. denied, 429 U.S. 940 (1976); H.R. Rep. No. 93-1463, 93d Cong., 2d Sess. 11 (1974)), and, under general equity principles, also applies to consented modifications.

the public interest, despite the omission of a provision that ideally it would include, if it judges that the likelihood of securing a better decree is outweighed by the risks inherent in further litigation. Cf. *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 154-155, 158 (1967) (Stewart, J., dissenting). This does not mean, of course, that a district court must automatically accept the government's concept of the public interest. But it does mean that, if the delicate settlement process is to function effectively, the court, in making its public interest determination, must always focus on the decree as a whole, and it must consider objections to any particular provision—especially when those objections come from private intervenors—only as they bear on the overall merit of the decree. For the same reasons, once the trial court decides that the decree as a whole is in the public interest, the correct standard of appellate review of challenges to the exclusion or inclusion of particular provisions is whether the district court's judgment as to the public interest impact of the consent decree as a whole represents a reasonable exercise of its remedial discretion.[32]

Neither Tandy nor NATA has come close to showing that the district court erred in concluding that the decree as a whole is in the public interest. Indeed, they have not even tried. They do not dispute the district court's judgment that the central element of the decree, the divestiture of the BOCs, is an essential and immensely

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[32] The same considerations apply to a provision included by the parties after the district court's rejection of an initial settlement proposal. That rejection does not prevent or control the submission of a new decree. See *Consent Decree Bills: Hearings on H.R. 9203, H.R. 9947 and S. 782 Before the Subcomm. on Monopolies and Commercial Law of the House Comm. on the Judiciary*, 93d Cong., 1st Sess. 43 (1973) (Senator Tunney); *In re International Business Machines Corp.*, 687 F.2d 591, 602 (2d Cir. 1982). The government, in agreeing to a revised settlement with AT&T after the district court had indicated that it would not approve the decree as proposed, did so on the basis of its judgment that the entry of the revised proposal, despite its drawbacks, would better serve the public interest than would continued litigation.

important step toward creating competitive markets for interexchange telecommunications services, telecommunications equipment sales, and CPE sales. Nor do they quarrel with the proposition that freeing AT&T from the marketing strictures of the 1956 decree enables that company to bring new competition to numerous other markets. Significantly, they do not contend that the decree as a whole disserves the public and should be rejected.

1. Tandy argues (J.S. 10-18) that the decree could be made even better and should be amended by this Court to require AT&T to divest its "Phone Center" stores to the BOCs and to grant patent licenses. But where, as in this case, the district court's approval of the overall decree was sound, it is not within the purview of an appellate court to redesign the government's bargain by adding or deleting provisions at the behest of disappointed third parties.[33]

Moreover, implementation of Tandy's proposals would be contrary to the public interest. As the district court found (J.S. App. 73-75), "there is no competitive basis" (*id.* at 75) for forcing AT&T to give up its "Phone Center" stores. The divestiture of the BOCs will remove AT&T's ability to engage in anticompetitive conduct in the equipment market, and the presence of AT&T, once divested of the BOCs, can be expected to enhance competition (*id.* at 67-71, 73-75).

Tandy's objection to the absence of mandatory licensing of AT&T's patents (J.S. 13-15) is equally unsound. Henceforth, AT&T will have to fund research and devel-

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[33] Tandy cites various cases (J.S. 11-12) for the proposition that this Court, on direct review of civil antitrust judgments, assesses the merits of particular provisions. All these cases involved litigated judgments where the judge's exercise of discretion in fashioning the various individual elements of relief was at issue. As noted above, the role of the appellate court is quite different in the case of a consent judgment where the district court's function is the more limited one of assuring that the agreement reached by the parties is, when viewed as a whole in light of the compromise nature of such agreements, consistent with the public interest.

opment from revenues earned in competitive markets, and it would be anticompetitive to burden it with patent licensing requirements that would dull its investment incentives. Moreover, as the district court correctly concluded (J.S. App. 77-79), even absent the mandatory licensing requirement, AT&T can be expected to license extensively because of existing contractual obligations and market incentives. Indeed, the thrust of Tandy's objection is not that the district court was wrong, but rather that it had an insufficient record on which to appraise the patent licensing issue and should be required to hold an evidentiary hearing (see J.S. 13-15). But consent decrees, unlike litigated decrees, do not require evidentiary hearings or, indeed, the taking of evidence at all. See 15 U.S.C. 16(e).[34]

2. While Tandy objects that the decree will not enable the BOCs to be strong competitors in the sale of customer premises equipment, NATA's objection to the decree is virtually the opposite. It expresses concern that the BOCs will dominate the customer premises equipment markets because the decree permits the BOCs to sell such equipment. It claims that the BOCs will be able to exploit their local service monopolies to disadvantage competitors in the sale of CPE (see NATA J.S. 3-10). But, like Tandy, NATA does not claim that the decree as a whole is contrary to the public interest. Rather, it seeks review of the district court's refusal to accept the decree's original proposal to exclude the BOCs from the sale of customer premises equipment.

While the government agrees with NATA's substantive position on the sale of equipment by BOCs,[35] the court's

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[34] Tandy's claim is factually as well as legally unsound because the consent decree at issue here came after virtually a full trial in the 1974 case in which the district court was able to obtain an extensive knowledge of the telecommunications and related industries. See J.S. App. 12.

[35] The decree originally proposed would have banned the BOCs from selling customer premises equipment in order to prevent them

failure to accept the original proposal in this regard, even if erroneous, affords no legal basis for interfering with the decree subsequently entered. Contrary to NATA's contention (J.S. 8), the district court did not find the original proposal to be in the public interest. Rather, the court, though finding much good in the original proposal, concluded that the proposed restriction on BOC provision of customer premises equipment and several other provisions rendered the decree not in the public interest unless modified (J.S. App. 165-172). At this point, it was up to the government to decide whether to appeal the district court's refusal to enter the decree originally proposed by the parties. See *Carson* v. *American Brands, Inc.*, 450 U.S. 79, 86-90

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from repeating AT&T's alleged anticompetitive practice of leveraging power in regulated monopoly markets to stifle competition in the unregulated equipment market. This restriction was consistent with the basic theory of the case and the decree, and with other prohibitions on BOCs, such as confining them to monopoly services and barring them from manufacturing equipment or selling telephone company equipment (J.S. App. 97-106). The district court recognized this consistency, but nonetheless thought that removing the ban on the sale of CPE would enhance competition by allowing the BOCs to compete against AT&T in the CPE market (J.S. App. 106-109). We believe that, in reaching this conclusion, the district court underrated the danger that the BOCs will disadvantage their competitors in interconnecting customer equipment. The court also ignored the fact that, if the BOCs are allowed to sell CPE, they will have the incentive to discrimnate against competitors in the installation and maintenance of equipment they sell and that such discrimination will impair competition at the manufacturing level as well. This is particularly so with respect to complex equipment where, for technical reasons, a BOC would be expected to market the products of only a few manufacturers. In sum, we believe that the public interest would have been served better by the initial decree than by the decree subsequently agreed to by the parties and approved by the court. But, as indicated above, we believe that the latter decree also—on the whole—serves the public interest, and this is the standard by which the decree, as finally agreed to by the parties and entered by the court, must be judged.

(1981).[36] The government decided, however, that the benefits to the public interest of immediate entry of a decree that met the court's criteria and provided far-ranging competitive relief to a previously restrained industry counselled strongly against incurring the uncertainties and delay that would be caused by either appealing the decision or continuing the trial of the case. It therefore decided to execute a new consent decree with AT&T. It is the overall merit of that decree entered by the court, rather than past rulings on superseded bargains, that is at issue. Since NATA does not even claim that the present decree is contrary to the public interest, there is no reason to set aside the bargain of the parties because an intervenor believes that an even better decree could be fashioned, and, indeed, once had been proposed.

CONCLUSION

The Court should accept the direct appeals and affirm the judgment of the district court.

Respectfully submitted.

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[36] The question whether an intervenor could have appealed from the court's refusal to enter that decree is not presented here, since the only appeals before this Court are from the court's order approving the modified proposed decree.

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